IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.M.No.8473 of 2007 and
C.W.P.No.2459 of 2007

Date of Decision : May 22, 2007.

Punita .... Petitioner

Vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.

HON'BLE MR.JUSTICE L.N.MITTAL.

* * *

Present : Mr.B.S.Bhasur, Advocate
for the petitioner.

* * *

J.S.KHEHAR, J. (Oral) :

C.M.No.8473 of 2007 :

C.M. is allowed.

Amended writ petition is taken on record, subject to all just exceptions.

Main Case :

We have heard learned counsel for the petitioner. The entire argument of the learned counsel for the petitioner, so as to persuade us not to follow the order passed by this Court on 13.11.2006 while deciding CWP No.10994 if 2006, is that inter se merit for appointments against the

post of ETT teachers, is irrelevant in terms of notification dated 25.05.2006 (Annexure P-7). Relevant extract of Rule 11 of the Punjab Panchayati Raj Primary Teachers (Recruitment and Conditions of Service) Rules, 2006 (hereinafter referred to as 2006 Rules), which has been the sole reliance at the hands of the learned counsel to substantiate his claim, is being extracted here under :-

> ***"11.*** *Criteria for appointments and transfer –* ***(1)*** *Appointment to the Service, shall be made school-wise from amongst the eligible candidates from the areas in the following order namely :-*
>
> *(a) village in which the school is situated ;*
>
> *(b) adjoining villages and towns ;*
>
> *(c) block and towns contiguous with block ;*
>
> *(d) adjoining blocks and contiguous towns; and*
>
> *(e) district*
>
> ***(2)*** *No appointment shall be made from outside the district. No transfer shall be made, except in the following circumstances, namely :-*
>
> *(a) on promotion against vacancy within district ;*
>
> *(b) in case of marriage, against vacancy ; and*
>
> *(c) within the block, in case sanctioned teacher strength in the school is revised as per the norm of Government.*
>
> ***(3)*** *The merit will be prepared by adding the percentage of marks obtained in 10+2 Examination or its equivalent and in E.T.T. In case of non-availability of*

eligible E.T.T. candidates, the candidates having B.A./B.Sc./B.Com. and B.Ed. Qualifications, will be considered."

The emphasis of learned counsel for the petitioner is on Clause (1) of Rule 11. Based on the aforesaid clause, it is submitted that in case, a candidate belongs to a particular village where a vacancy is available, the aforestated candidate, to the exclusion of all others, irrespective of their inter se merit, should be appointed. This proposition is not acceptable to us in view of principles enshrined under Articles 14 and 16 of the Constitution of India. We can also not overlook Clause (3) of Rule 11 which stipulates the manner of determining inter se merit of the candidates, who apply for selection to the posts governed by 2006 Rules. Statutory rules have to be read in such a manner that the same are in consonance with the provisions of the Constitution of India. It is just for the aforesaid reason that the instant contention was not accepted while disposing of CWP No.10994 of 2006. A selection process de hors inter-se merit of the competing candidates would certainly by violative of the provisions of the Constitution of India. Such an interpretation would also render Clause (3) of Rule 11 meaningless. Article 16(2) of the Constitution of India mandates that there shall be equality in matters relating to employment or appointment, and also specifically that no one can be placed at an advantageous or disadvantageous position merely on the basis of his place of birth or residence. Acceptance of the instant plea of the petitioner would make the rule violative of Article 16 of the Constitution of India. It is, therefore, not possible for us to accept that the candidate possessing higher merit will be overlooked because of the residential status of another. In fact, as noticed above, the scheme of the Constitution of India as

expressed in Articles 14 and 16 thereof negates the instant contention of the learned counsel for the petitioner.

In view of above, we find no merit in this writ petition and the same is accordingly dismissed.

(J.S.KHEHAR)
JUDGE

May 22, 2007
monika

(L.N.MITTAL)
JUDGE